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Defense for Ex-CIA Agent Snepp To Focus on 1st Amendment Issue

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Attorneys for former Central Intelligence Agency agent Frank W. Snepp said yesterday their client's First Amendment rights would be violated if the Justice Department prevails in its civil suit over his highly critical book on the CIA's role in Vietnam.

In a formal answer to the Justice Department's complaint in Alexandria federal court, Snepp's lawyers indicated their defense will raise a fundamental question about the government's authority over its employees: can the government bind federal workers not to talk or write about their jobs?

Justice Department lawyers working on the case, however, reiterated their view that the dispute is a "simple contracts case" in which Snepp breached a written agreement.

Justice filed suit last month following publication in November of Snepp's book, "Decent Interval." The volume, based on Snepp's experience as a CIA strategy analyst in Vietnam, presents a caustic portrait of American bungling in the fall of Saigon in March 1975.

Snepp's attorneys said in interviews yesterday the case could have implications for every government agency. Although the book deals with politically charged topics, there has been no assertion by the government that Snepp revealed classified information.

In a 1972 suit involving another CIA book written by former agent Victor Marchetti and journalist John Marks, a federal appeals court upheld the CIA's right to review the manuscript and censor information—but only classified information.

Snepp's lawyers said yesterday the present case is different because it does not deal with classified matter.

"This case could come up in any agency," said Mark Lynch, an American Civil Liberties Union lawyer working on the case. "If the CIA wins, you're going to have 'no-publication' agreements at the ICC, the CAB and every other office in government."

The Justice Department, in contrast, has portrayed the Snepp suit as a straightforward breach of contract. "This is just a simple contract case, the kind of thing any first-year law student could figure out," said a Justice attorney involved in the suit. The attorney, citing department regulations, asked not to be identified.

Stripped to its essence, a contract action requires the plaintiff—the Justice Department in this case—to prove three things: a valid contract existed, the defendant failed to adhere to it and the plaintiff was damaged.

Justice maintains that a valid contract was created in 1968 when Snepp, as a condition of being hired by the CIA, signed a "secrecy agreement" in which he agreed "not to publish . . . any information or material relating to the Agency . . . either during or after my term of employment by the Agency without specific prior approval by the Agency."

Justice says Snepp breached that contract when he failed to submit his book for prior review. It says the breach resulted in damage to the United States "by the undermining of confidence and trust in the agency."

Snepp's lawyers agree only that he failed to submit his book for review.

They claim the "secrecy agreement" was not a valid contract because it amounts to a waiver of Snepp's First Amendment rights.

That question was discussed by the Fourth Circuit Court of Appeals, which has jurisdiction over the Snepp case, in the 1972 Marchetti-Marks case. The decision said a contract prohibiting publication of unclassified material could not be enforced by the government.

"To the extent that it purports to prevent disclosure of unclassified information," the appeals court said, "the oath would be in contravention of . . . First Amendment rights."

Although Justice Department lawyers were hesitant to discuss the theory of their case, they seemed to think the 1972 decision will not impair their argument. They suggested they will emphasize that the "secrecy agreement" was not an absolute prohibition on publication, but rather a requirement that an author submit his book for "review" before publication.

Snepp's lawyers said even if the government establishes the validity of the contract, the suit will be dismissed because the CIA cannot prove it was damaged by Snepp's book.

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